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*Attorneys for Defendant*

**FILED**



4:24 pm, 4/22/21

**Margaret Botkins**  
**Clerk of Court**

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF WYOMING**

MARTY JONES,

Plaintiff,

v.

JASON KUTNYAK,  
 WERNER ENTERPRISES, INC.,  
 DOES 1-X,

Defendants.

Civil Number: 21-CV-00074-J

**PETITION FOR REMOVAL OF STATE COURT ACTION**

Pursuant to 28 U.S.C.A. §§ 1332, 1441, and 1446, Defendants Werner Enterprises, Inc. and Jason Kutnyak (hereinafter collectively referred to as “Defendants” or individually by name), by and through their counsel, hereby petition the Court to remove the above-captioned matter from the Wyoming Third Judicial District as follows:

1. On March 31, 2021, Plaintiff filed his *Complaint* against Defendants in the Wyoming Third Judicial District, civil action number: 21-121-G. (*Complaint* attached hereto as “Exhibit A”).

2. In his *Complaint*, Plaintiff brings the following claims: 1) negligence against Jason

Kutnyak; 2) vicariously liability and/or *respondeat superior* against Werner Enterprises; 3) negligent hiring, training, and supervision against Werner Enterprises; and 4) negligence against Werner Enterprises.

3. Defendant Werner Enterprises was served with the *Complaint* and *Summons* on April 7, 2021; therefore, its answer to Plaintiff's *Complaint* is due on or before May 7, 2021. (*Summons* and *Service of Process Notice* attached hereto as "Exhibit B").

4. Pursuant to 28 U.S.C.A. § 1446(b), Defendants' *Petition for Removal of State Court Action* ("Petition") is timely as it is filed within thirty (30) days after service of the *Complaint* (initial pleading).

5. In this case, complete diversity of citizenship exists between the parties because Plaintiff is not a citizen of the same state as any of the Defendants:

- a. Plaintiff Marty Jones is a resident of Tennessee;
- b. Defendant Jason Kutnyak is a resident of Utah; and
- c. Defendant Werner Enterprises is a Nebraska corporation. A corporation is deemed a citizen of the state in which it is incorporated and of the state where it has its principal place of business. 28 U.S.C.A. § 1332(c)(1). Thus, Werner Enterprises is a citizen of Nebraska for diversity purposes.

6. When a plaintiff's damages are unspecified, "courts generally require that a defendant establish the jurisdictional amount by a preponderance of the evidence." *Martin v. Franklin Capital Corp.*, 251 F.3d 1284, 1290 (10th Cir. 2001). Here, Plaintiff is seeking damages for alleged injuries he incurred in an accident that occurred on Interstate 80 on December 23, 2017; however, his *Complaint* does not specifically provide for a dollar amount. Nonetheless, based on the allegations in his *Complaint*, Plaintiff is seeking damages for past and future medical expenses;

past and future loss of income and earning capacity; past and future pecuniary loss; past and future pain and suffering; past and future loss of enjoyment of life; past and future disability; and other damages. Based on these allegations, the amount in controversy exceeds \$75,000.00.

7. Because complete diversity jurisdiction exists and the amount in controversy exceeds \$75,000.00, this Court has jurisdiction over this case pursuant to 28 U.S.C.A. § 1332(a) (diversity jurisdiction).

8. Simultaneously herewith Defendants' *Petition*, Defendants are filing *Defendants' Notice of Removal to Federal Court* along with a copy of this *Petition* in the Wyoming Third Judicial District Court pursuant to 28 U.S.C.A. § 1446(d).

9. Pursuant to 28 U.S.C.A. § 1446(a), attached hereto as "Exhibit C" is a true and correct copy of the entire file of record of the above-captioned matter in the Wyoming Third Judicial District Court.

10. Consequently, because this Court has jurisdiction over this matter and because all of the procedural requirements have been met, removal of the above-captioned matter from the Wyoming Third Judicial District Court to this Court is proper.

WHEREFORE, Defendants Werner Enterprises, Inc. and Jason Kutnyak, by and through their counsel, hereby petition the Court to remove the above-captioned matter from the Wyoming Third Judicial District to this Court.

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DATED this 22<sup>nd</sup> day of April 2021.

WERNER ENTERPRISES, INC. AND  
JASON KUTNYAK, Defendants

By:



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*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served this 22<sup>nd</sup> day of April, 2021, addressed to:

Eric Hinkley  
T. Aaron Stringer  
LOWE LAW GROUP  
6028 S. Ridgeline Driver, Suite 200  
Ogden, Utah 84405

- ☒ U.S. Mail (Postage Prepaid)
- ☒ Email
- ☐ Overnight Delivery
- ☐ Hand Delivery
- ☐ CM/ECF System



Keith J. Dodson